IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3756 OF 1994

1. Maratha Samaj Seva Mandal,
through President,
c/o.Chhatrapati Shivaji Night
College of Arts & Commerce,
Saraswat Chowk, Solapur.

2. Chhatrapati Shivaji Night
College of Arts & Commerce,
Solapur. Petitioners

versus

1. Mrs.Rajani Rajan Dixit,
r/o.194/3, Mitranagar, Budhwar
Peth, Solapur.

2. Education Officer (Secondary),
Solapur Z.P; Solapur.

3. The Deputy Director,
Pune Region.

4. The State of Maharashtra. Respondents

Mr.M.K.Deshpande, Adv. for Petitioners.
Ms.D'Souza for Mr.M.P.Vashi for respondent no.1
Mr.V.Mhaispurkar, AGP for respondents 2 to 4.

CORAM : R.M.S.KHANDEPARKAR, J.

DATE : 28th November 2006

JUDGEMENT :

1. Heard. The petitioners challenge judgement and order dated 6th October 1993 passed by the

School Tribunal in Appeal No.61 of 1992 whereby the respondent no.1 has been declared as Full Time Teacher in respect of Chhatrapati Shivaji Night Junior College of Arts and Commerce, Solapur.

2. While challenging the impugned order the learned advocate for the petitioners has drawn my attention to clause 54.3 of the Secondary Schools Code and relying upon an unreported decision of the Division Bench of this Court in the matter of Maratha Samaj Seva Mandal, Solapur and another Vs. Madhukar Sadashiv Vyawahare and others in Writ Petition No.467 of 1993 delivered on 24th March 2006, submitted that in case of Night Junior Colleges, the classes are required to be conducted only for two and a half hours duration and therefore the teachers appointed in such colleges are not entitled for declaration as Full Time Teachers or on regular pay scale meant for full time teachers, and, therefore, the Tribunal erred in declaring the respondent no.1 to be a full time teacher inspite of the fact that the institution in which the respondent no.1 has been employed, is only a night junior college and there is no dispute about this fact.

3. Apparently, the School Tribunal has not considered the provisions of clause 54.3 of the Secondary School Code while dealing with the matter. Clause 54.3 of the said Code provides that night high school should meet for two and a half yours or three hours per day as the individual school decides, for six days in a week. Provision for a short recess may be made beyond this time. Clause 8 of Chapter-I of the said Code comprises of definitions of the words used in the said Code and it defines the term "Night High School" to be a Secondary School which admits pupils of 12 years of age and above and which teaches the Secondary School courses for half the daily working hours of school, to pupils who are unable by their daily avocations, to attend day schools. The term "School" has been defined to mean a Secondary School or Higher Secondary School (Junior College) or a Higher Secondary Multipurpose School (Junior College) or a Vocational High School or any other institution imparting through approved graded courses general education, which may be either wholly academic or partly academic and partly Vocational, suitable for pupils in the age of adolescence.

4. Obviously, therefore, the provisions of the

Code are applicable to the Night Junior Colleges which impart education for about two and a half hours duration. It is not in dispute that the institute imparts education for two and a half hours duration. That apart, the Division Bench of this Court in Maratha Samaj Seva Mandal Solapur and another Vs. Madukar Sadashiv Vyuawahare and others (supra) has clearly held that if the Night School or Night Junior College is required to conduct classes only for two and half hours duration, the teachers engaged in such school or college should not be treated to be as full time teachers and would not be entitled for regular pay scale under MEPS Rules, 1981. The law in this regard being well settled and provisions of law which applies to the institute in question clearly provides that the period or duration for imparting the education being only two and half hours per day, as rightly submitted by the advocate for the petitioner, the respondent could not have been declared as Full Time Teacher in relation to her appointment in the institution of the petitioner wherein the education was imparted in the Night Junior College.

5. For the reasons stated above, therefore, the

impugned order cannot be sustained and is liable to be set aside and the appeal filed by the respondent is liable to be dismissed.

6. In the result, therefore, the petition succeeds. The impugned order is hereby set aside and the appeal filed by the respondent is hereby dismissed. Rule is made absolute in the above terms. No order as to costs.

(R.M.S.KHANDEPARKAR, J.)